

City of Newburgh Industrial Development Agency

ANNUAL REPORT -- January 1 to December 31, 2009

1. Principal Address: City Hall, 83 Broadway, Newburgh, NY 12250

2. Agency and Mission: The Agency was established in 1982 under New York State General Municipal Law 18A, section Section 913:

For the benefit of the city of Newburgh and the inhabitants thereof, an industrial development agency, to be known as the CITY OF NEWBURGH INDUSTRIAL DEVELOPMENT AGENCY, is hereby established for the accomplishment of any or all of the purposes specified in title one of article eighteen-A of this chapter. It shall constitute a body corporate and politic, and be perpetual in duration. It shall have the powers and duties now or hereafter conferred by title one of article eighteen-A of his chapter upon industrial development agencies. It shall organize in a manner prescribed by and be subject to the provisions of title one of article eighteen-A of this chapter. Its members shall be appointed by the governing body of the city of Newburgh. The agency, its members, officers and employees, and its operations and activities shall in all respects be governed by the provisions of title one of article eighteen-A of this chapter. It shall be the successor in interest to the agency created by chapter three hundred four of the laws of nineteen hundred seventy-one.

3. Membership: The Agency consists of seven member appointed by the governing body of the City of Newburgh. The agency's bylaws states that any one or of the members may be an officer or employee of the City. A member may continue to hold office until a successor is appointed.

4. Acts of the Agency require a quorum of four members and majority vote of four (4) on any action

5. Board Members – January 1 to December 31, 2009

| <u>Name</u> | <u>Profession</u> |
|----------------------------------|----------------------------------------------------------------------------------------------------------|
| Richard Bedrosian | College Professor, retired |
| Michael Curry – Treasurer | Regional Businessman |
| Spencer Gulliver – Chair | Local Businessman |
| Jerry Maldonado | Ford Foundation Program Manager |
| Sean O'Shea | Bouillon Inventory Accountant, US Mint |
| John Penney – Secretary | Retired: Public Safety Officer and Union Leader, and local business man |
| Joshua Smith – Vice Chair | Former: College President Chancellor / (California, NYC and New Jersey), Ford Foundation Program Manager |

--Independent Members: All

--ABO Training: During 2009, the entire Board participated in Board Training given by CUNY and Albany Law.

--Attendance: There were 14 meeting in 2009

| | |
|----------------------------------|----------------------------|
| Richard Bedrosian | attended 12 of 14 meetings |
| Michael Curry – Treasurer | attended all meeting |
| Spencer Gulliver – Chair | attended 6 meeting |
| Jerry Maldonado | attended 12 of 14 meetings |
| Sean O'Shea | attended 12 of 14 meetings |
| John Penney – Secretary | attended 13 of 14 meetings |
| Joshua Smith – Vice Chair | attended all meeting. |

5. Committees of the Board:

Governance Committee: Spencer Gulliver, Jack Penny, Joshua Smith and Jerry Maldonado

Audit and Finance Committee: Michael Curry, Richard Bedrosian, Sean O'Shea, Jack Penny

6. Fiscal Management/Internal Controls:

In late 2008, the Board encountered difficulties in gaining financial information of the Agency's audits, financial files and bank accounts as well as project files from Agency staff. When asked by the Administrator to sign a Confidentiality of Records drafted by the City of Newburgh City Council prior to gaining access to IDA records, the board refused.

In early 2009, under direction of the Treasurer, the Agency moved to:

- Freeze all financial activity until the Agency was given access to its financial information.
- End disbursement approvals by City Comptroller and Acting Administrator
- Give signatory power for checks under \$1000 to the Treasurer of the Agency.
- Transferred signatory powers from the Acting Administrator to the officers of the Agency.
- Required that the Board authorize all payments by resolution at monthly meetings.
- The Treasurer maintained the Agency's financial system in QuickBooks.

Audit: In December of 2008, the then Administrator executed a contract with Nugent and Haussler PC to undertake the 2007 Audit without consent of the Board. In 2009, the Audit Committee and Board approved the \$12,000 contract. The audit

was completed in May of 2009. It detailed short comings, non compliance, issues with management and access to financial information, lack of controls.

The Audit Committee began the process to establish proper management and controls.

See: <http://www.cityofnewburgh-ny.gov/gov/docs/AuditlettersFinal2007.pdf>

7. Executive Officer, Personnel and Agency Operations:

Note: The Administrator of the Agency, a part time position, is appointed by the City Manger as provided by the City Charter:

ARTICLE XIV

Department of Planning and Development

[Added 1-27-2003 by L.L. No. 1-2003]

§ C14.00. Establishment; head.

There shall be a Department of Planning and Development, headed by a Director of Planning and Development, who shall be appointed by the City Manager and who shall serve at the pleasure of the City Manager.

§ C14.01. Director of Planning and Economic Development.

The Director of Planning and Development shall be appointed on the basis of his education and experience in carrying out the duties of the position. Among the Director's functions and duties, but not by way of limitation, shall be the following:

- A. To act as a full-time administrator of the Department, the Newburgh Local Development Corporation and the Newburgh Industrial Development Agency offices to ensure a coordinated and comprehensive approach to community and economic development within the City of Newburgh.**
- B. To develop and administer a combined and integrated staff to support the Newburgh Community Development Agency, Newburgh Local Development Corporation and the Newburgh Industrial Development Agency and other community-based programs recognized by the Council.**

a. Agency Staff and Compensation Schedule

No staff received an annual of Salary of \$100,000 or more. The Agency was provided staffing services for the following positions from the Department of Development and Planning and from the City of Newburgh Archivist for storage of IDA records at a cost of \$43,644:

Administrator *

Secretary/Assistant to the Administrator

City Planner

Archivist.

*(In 2009, Lourdes Zapata Administrator resigned and the City Manager assigned Courtney Kain to serve as interim Administrator on a part-time basis.)

8. Activities/ Management/Compliance

a. Procurement/ Services:

A legal services contract was awarded to the firm of Oxman, Tulis, Kirkpatrick & Whyatt of White Plains following an RFP and interviews of potential Candidates.

The Agency, following a posting, search and interviews contracted the services for the recording secretary.

The Agency consented to honor the audit contract for 2007 that was initiated by the previous Administrator without Board approval.

b. Legal Action:

In December of 2008, the City of Newburgh Industrial Development Agency's (NIDA) part time Administrative Director with City approval drew a check from the Agency's account in the amount of \$388,825.97 payable to the City of Newburgh, purportedly for the purpose of reimbursing the City of Newburgh for staffing services allegedly provided to the NIDA over the past few years. The check had been drawn without the NIDA's knowledge or authorization. On May 6, 2009, Agency counsel commenced a Special Proceeding pursuant to CPLR Article 78, petitioning the Supreme Court, Orange County to order the return of the funds to the NIDA. The proceeding was settled by a Stipulated Order of Settlement, so ordered by the Hon. Lewis J. Lubell, J.S.C., on December 17, 2009, directing, inter alia, that the City of Newburgh return \$190,000 to the NIDA's operating account, and that no further charges be made against the NIDA for staffing services provided by the City of Newburgh through the end of 2009. The funds were returned to the NIDA account on or about December 15, 2009. (The Stipulated Settlement is attached.)

c. Fiscal Oversight:

The Agency, on the recommendation of the Treasurer and Audit Committee, limited the Administrator's access to the Agency's finances, bank accounts and check book. A fiscal management process was put into place and continues to evolve. The Treasurer was approved to sign checks under \$1000; all other expenditures are approved by the Board at monthly meetings. The work was guided by Audit Committee.

d. Audit and Committee: Issued and RFP, interviewed responses and contracted with Sedore & Company to undertake audits for 2008 and 2009. It supervised the 2008 audit, which involved extensive investigation of records by the auditors; it was not completed until in 2010. In May 2009, the Audit Committee reviewed and acted on the findings letter of the 2007.

e. Governance Committee and Transparency: The committee finalized new by-laws and policies. The Agency adopted by-laws, policies, as well as management and operational measures consistent with the PAAA of 2005, Article 18A of the General Municipal Law of New York State, established a website and posted information to: www.cityofnewburgh-ny.gov/gov/IDA.htm
The work was guided by the Governance Committee.

A representative of the State Comptroller met with several board members to discuss difficulties in accessing files and financial data from staff assigned to the Agency. A chief examiner in the Comptroller's office advised the officers to set parameters consistent with state law and regulations.

Agency Counsel briefed members on the 2009 provisions of the PAAA.

f. Administration:

In the spring of 2009, the acting Administrator resigned and head of the City's Community Development Block Grant Program was appointed, by the City Manager to replace her. The new appointment was approved by the Agency.

The Board asked the Administrator to request that the City provide the Agency with office and meeting space.

To better understand the activities of the Agency, the Board asked the Administrator to provide the Agency with background briefings on owned property, possible projects, planning, real estate, contractual commitments and billing, explanation of items in previous budgets. Joint meetings with the City Council were requested as well.

Early in 2009, The Agency's Administrator advised the members that the IDA's files were intermingled with Planning, Economic Development, CDBG and LDC files and could not be separated. To date, the Agency was provided copies of the former Administrator's 2005-08 work files. The former Counsel to the Agency provided his confidential files to the Agency, but the City has not yet relinquished the intermingled files as the independence of the Agency by Newburgh's Corporation Counsel was acknowledged. A major issue in identifying Agency was exacerbated because projects, contracts, and grants were jointly undertaken by City and Agency.

Following a firing and/or replacements of several City Managers, The City appointed a new Acting City Manager, Richard Herbek. The Agency met with the newly appointed manager to discuss the newly mandated transparency and independence requirements have changed the operation and

role of the Agency within City government. This began a period of cooperation.

A contract agreement with the City of Newburgh for administrative services was approved.

g. Grants:

The Agency and City received a U.S. Economic Development Administration for construction of infrastructure of City and Agency owned parcels on West Street for commercial development. The Agency authorized Counsel to work out a closeout of on the grant and reimbursement for costs incurred by the City and Agency.

Mortgage Agreement: The City requested that the Agency accept \$300,000 from a federal grant to the city. The funds would serve as mortgage to Leyland Alliance and Habitat for a joint project to develop 24 units of housing. The project was approved but did not move forward and the Agency returned to funds to City.

h. PILOT:

Corwin Court PILOT: A review of the Agency indicates that the Agency entered in a lease with Corwin Management for a commercial project; the lease is for a PILOT. Unfortunately, the PILOT does not require Corwin Management to provide required data for its tenants. This 2001 project was a joint City-Agency assisted project. In 2009 The Agency notified Corwin Court Management of their failure to make PILOT payments to the City.

j. Property Ownership and Interests:

Foundry Development LLC Project: The Agency approved an extension date for a certificate of occupancy deadline to 12/31/11. (Noted: The Agency has a 'right of reverter' as a condition for the construction 60+/- condominium units which were taken in rem by the City of Newburgh and transferred to the Agency.

Potential Development: The Agency discussed certain properties in the City noting how IDA benefits, once the Agency was recertified, could foster commercial, job generating development. (Former NYS Armory and Verizon Building, Scobie Drive industrial site, West Street).

Ownership: The Agency asked Counsel to undertake title searches to identify Agency owned land and project-fee owned parcels held by the IDA. City records did not differentiate fee and beneficial ownerships.

Murphy's Ditch Easement: Agency Counsel clarified a 2006 easement agreement that the Agency's Administrator failed to execute. The property was transferred by the City to the Agency and is located over property in the City's Reservoir watershed. The Agency approved the transfer of the easement in 2006 when no disposition policy existed.

Pierces Road Industrial Site/Brownfield: This 15 acre parcel is zoned for industrial use. It was purchased by the IDA from the New York State Department of Transportation (surplus land) in 1984 following the completion of I-84. It was previously been owned by the City as part of **or adjacent to the** City of Newburgh landfill. The level of contamination (city landfill and Dupont/Buyers drum wastes) on the site is not clear at this time. The Agency authorized its Counsel to pursue the status of the property. The Agency's and adjacent site owned by the City of Newburgh is the subject of a Brownfield Opportunities Area grant by the NYS Department of State to a community not for profit. A portion of the parcel would be identified as a possible Drum Cache site by EPA in 2011.

Cell Tower Site: The property is leased to the IDA by the City, but was previously owned by the IDA. The Agency receives fees from the users of the cell tower. The Board asked why the property was taxed. (The issue went unresolved into 2012 at which time the Agency asked that the City transfer title back to the Agency.)

Note:

MEASUREMENT REPORT— A separate measurement report was not required in 2009. The Mission of the Agency outcomes are enumerated in the annual report.